

# KERALA HIGH COURT

Kesava Menon

Vs

State (Bombay)

C.R.P. Nos. 1732 and 1879 of 1975

(P. Narayana Pillai and P. Subramonian Poti, JJ.)

06.04.1976

## JUDGEMENT

### **Narayana Pillai, J.**

1. Application of certain provisions of Section 82 of the Land Reforms Act, I of 1964, has to be considered in these two Revision Petitions. That section, so far as is relevant here, reads :-

"82. (1) The ceiling area of land shall be .. ... ..

(b) in the case of a family consisting of two or more, but not more than five members, ten standard acres, so however that the ceiling area shall not be less than twelve and more than fifteen acres in extent; .....

(2) For the purposes of this Chapter, all the lands owned or held individually by the members of a family or jointly by some or all of the members of such family shall be deemed to be owned or held by the family .....

Explanation I:- For the purpose of this section, where a person has two or more legally wedded wives living, the husband, one of the wives named by him for the purpose and their unmarried minor children shall be deemed to be one family; and the other wife or each of the other wives and her unmarried minor children shall be deemed to be a separate family." The contention of the petitioners in these two Revision Petitions is that if a person who owns lands has two wives and they have no lands, as regards his lands the ceiling limit is that for two families and that is justified by Explanation I.

2. The matter arises in this way : One Kesava Menon who has two wives owns extensive lands. While he has no issue through his first wife he has issues through the second but their number is not more than four. In the statement he filed under Section 85 (2) of the Act regarding excess lands he treated his two wives as members of two different families and named the first wife as a member of his family. The Taluk Land Board treated his first wife as a member of his family and fixed the ceiling area of his lands accordingly as for one family, namely 14.91 acres, and directed him to surrender the excess portion of 67.44 acres. It is the correctness of that order that is

challenged in these revision petitions, one of which is filed by Kesava Menon and his two wives and the other by the heirs of a transferee of some of his lands.

3. If a person has two wives, including them and his children through them, as a matter of fact in the ordinary sense there is only one family. But Explanation I has introduced a fiction by which he is allowed to treat the two wives with their children as constituting two separate families. Along with the granting of that privilege a restriction is also placed by the Explanation. The restriction is that he can be a member of only one of such families to be chosen by him and not of both the families simultaneously. That the husband can be a member of only one of the families is an integral part of the, Explanation. While sub-section (1) has fixed the ceiling area sub-section (2) has prescribed the lands to be taken into account in calculating the ceiling area of a family. Sub-section (2) says that in calculating the lands owned by a family those owned individually and jointly by the members of that family should be taken into account and Explanation I is an explanation to the entire section including sub-section (2). The result is that although notionally the second wife of Kesava Menon and her issues constitute a separate family, as he is not a member of that family his lands cannot be taken into account in fixing the ceiling area of that family. Otherwise it would lead to the absurd consequence of having to take into account the lands of a stranger to a family also in fixing the ceiling of that family. If the husband cannot be a member of both the families at the same time it inevitably follows that his lands can be taken into account only in calculating the ceiling area of the family to which he is deemed to belong. It was the same conclusion that was reached by our learned brother, Viswanatha Iyer J., in *Kuttan v. State of Kerala*<sup>1</sup>, In the present case the Taluk Land Board was right in fixing the ceiling area of the lands held by Kesava Menon as 14.91 acres and directing him to surrender 67.44 acres as excess land.

4. The only other point pressed in these revision petition was about the finding in the order of the Taluk Land Board that Kesava Menon's second marriage was invalid. That finding regarding the status of the second wife, being unnecessary, is set aside. These revision petitions are allowed only to that extent. In all other respects they shall stand dismissed. No costs.

Order accordingly.

<sup>1</sup>1976 Ker LT 49